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IN THE SUPREME COURT OF THE STATE OF IDAHO

**IN RE: THE APPLICATION FOR  
ZONING CHANGE.**

**Docket No. 29739**

**V.**

**Respondent.**

J. Scott Andrew, Blackfoot, argued for respondent.

The Browers appeal the district court’s judgment dismissing a petition for judicial review of an application to rezone real property. The Idaho Supreme Court reviewed the district court’s decision holding inapplicable a provision in the zoning ordinance that would have required the commissioners to accept the recommendation of the planning and zoning commission unless rejected by a majority vote of the commissioners and its’ decision denying the Browers request to present additional evidence on appeal.

On July 30, 2002, the Board of County Commissioners for Bingham County considered the Browers' request to rezone an area where they owned real property so that they may subdivide it. The planning and zoning commission recommended approval of the zoning change. At the commencement of the action one of the county commissioners recused himself leaving two commissioners to act upon the requested rezone. On August 8, 2002, the two county commissioners found themselves deadlocked and as a result, denied the request for a zoning change.

On September 4, 2002, the Browers filed a petition for judicial review. The district court denied the request holding the action recommended by the planning and zoning commission required adoption of an ordinance. The district court found that the quoted passage of the ordinance was in conflict with state law and thus upheld the denial. The Browers also filed a motion seeking leave to conduct discovery into the issue of whether one of the commissioners had considered matters outside the record. They supported this motion with a letter to the Browers by a Carrie Hasselbring. The district court held the Browers were not entitled to present additional evidence. The Browers appealed.

In an opinion released today, the Idaho Supreme Court affirmed the district court's decision. The Court found that under Idaho Code § 67-6511, the planning and zoning commission may only recommend zoning changes, the governing board, in this case the county commissioners, either adopts or rejects those requested changes. Idaho Code § 67-6504 grants to the commission the authority to adopt ordinances; this authority is non-delegable. The zoning change requested by the Browers required the adoption of an ordinance amending the current zoning ordinance. However, section 17.7 of the Bingham County Zoning Ordinance provides, "The Commission shall accept the recommendation of the [Planning and Zoning] Board unless rejected by a majority vote." The Court held that the application of section 17.7 would be in direct conflict with Idaho Code §§ 67-6504 and 67-6511 because the effect of its application, in situations where the commission is deadlocked, is that the dissenting commissioner must abandon his own discretion and approve the planning and zoning commission's recommendations. There is no real difference in requiring the commission to adopt an ordinance and delegating to the planning and zoning commission the authority to adopt an ordinance. Article XII, § 2 of the Idaho Constitution clearly provides, "Any county ... may make and enforce ... all such local police, sanitary, and other regulations as are not in conflict ..., with the general laws." Therefore, § 17.7 of the county zoning ordinance cannot be applied in this situation because to do so would conflict with statutes enacted by the legislature.

The Idaho Supreme Court also found inapplicable Idaho Code § 67-6535(b) holding that because the board of commissioners was deadlocked it neither approved nor denied the application for rezoning. Idaho Code § 67-6535(b) only applies when there is a decision on the merits of the application. Lastly, the Idaho Supreme Court found the district court did not abuse its discretion in denying presentation of additional evidence. The Court found the letter from Ms. Hasselbring to be ambiguous.